IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDREW P. BLAKE,	§	
	§	No. 378, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0701006581
Appellee.	§	

Submitted: December 3, 2010
Decided: February 8, 2011

Before **HOLLAND, BERGER** and **JACOBS,** Justices.

O R D E R

This 8th day of February 2011, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Andrew P. Blake, filed an appeal from the Superior Court's May 27, 2010 memorandum opinion denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").[1] We conclude that there is no merit to the appeal and affirm for the reasons stated by the Superior Court.

[1] *State v. Blake*, 2010 WL 2501524 (Del. Super.).

(2) In February 2007, Blake was indicted on ten counts, *to wit*, two counts of Aggravated Menacing, two counts of Possession of a Firearm During the Commission of a Felony (PFDCF), and one count each of Use of a Dwelling for Keeping Controlled Substances, Possession of a Deadly Weapon by a Person Prohibited (PDWBPP), Possession with Intent to Deliver a Narcotic Scheduled II Controlled Substance, Resisting Arrest, Possession of Drug Paraphernalia and Criminal Mischief. Prior to trial, the defense filed a motion to suppress evidence obtained after a warrantless entry of an apartment where Blake was located. The motion was denied following a suppression hearing.

(3) Following the denial of Blake's motion to suppress, the State and Blake agreed to proceed with a non-jury trial on only six counts of the ten-count indictment, *i.e.*, one count each of Aggravated Menacing, PFDCF, Use of a Dwelling for Keeping Controlled Substances, PDWBPP, Resisting Arrest and Possession of Drug Paraphernalia. The State entered a *nolle prosequi* on the remaining four counts.

(4) After the July 31, 2007 bench trial, Blake was found guilty, as charged, of the six counts. On November 16, 2007, after a presentence investigation, the Superior Court sentenced Blake to thirteen years at Level

V, three years mandatory, suspended after eight years for decreasing levels of supervision.

(5) On direct appeal, Blake argued that the Superior Court erred in denying the motion to suppress. This Court concluded, however, that "exigent circumstances justified the entry under the emergency doctrine exception to the Fourth Amendment" and affirmed the Superior Court's judgment.[2]

(6) In June 2009, Blake filed a motion for postconviction relief pursuant to Rule 61. Blake alleged that (i) an affidavit in support of a search warrant obtained after the warrantless entry was based on false information; (ii) he did not knowingly, voluntarily and intelligently waive his right to a jury trial; and (iii) he was denied the effective assistance of counsel. At the Superior Court's direction, Blake's defense counsel filed an affidavit in response to Blake's allegations of ineffective assistance of counsel.

(7) When reviewing the Superior Court's denial of postconviction relief, this Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.[3] In pertinent part, Rule 61(i) (3)

[2] *Blake v. State*, 954 A.2d 315, 316 (Del. 2008).
[3] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

bars litigation of any claim that could have been raised in the prior proceedings but was not.[4]

(8) On appeal, Blake contends, as he did in his postconviction motion, that he did not voluntarily waive his right to a jury trial. The Superior Court barred the claim under Rule 61(i) (3) after determining that Blake could have raised the claim on direct appeal but did not and that review of the claim was not otherwise warranted.[5] The Superior Court also denied the claim on the merits, stating that "[t]he Court has re-examined its colloquy with Blake and reaches the same conclusion it did at trial . . . . Blake's waiver of jury trial was knowing, intelligent, and voluntary." We agree with the Superior Court's determination that Blake's claim was procedurally barred under Rule 61(i) (3) without exception.

(9) Next, Blake contends that a search warrant obtained and executed after the warrantless entry was based on a false affidavit identifying him as the triggerman in a New York shooting. The Superior Court determined, however, that Blake's claim is unavailing, and we agree. Independent of any information in the affidavit with respect to a New York

[4] *See* Del. Super. Ct. Crim. R. 61(i) (3) (barring a claim not previously raised absent cause for relief from the procedural default and prejudice).
[5] *See* Del. Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of (i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

shooting, the search warrant was, as the Superior Court observed, "replete with references to things the police saw once (properly) inside on the warrantless entry." Thus, Blake's claim of prejudicial error is without merit.

(10) Finally, we conclude that Blake's allegations of ineffective assistance of counsel are without merit for the reasons stated in the Superior Court's memorandum opinion of May 27, 2010. To prevail on his claim of ineffective assistance of counsel, Blake was required to establish that his trial counsel's representation fell below an objective standard of reasonableness and was prejudicial.[6] In this case, after ruling that Blake's underlying claims were without merit, the Superior Court correctly reasoned that Blake was not prejudiced as a result of any alleged ineffectiveness of his counsel with respect to those claims. The Superior Court also correctly determined that defense counsel could not be faulted for not moving to suppress a statement made by Blake after he was read *Miranda* warnings and agreed to waive his rights.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[6] *Strickland v. Washington*, 466 U.S. 668, 687-88, 692 (1984).